

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

ANTONIO SANCHEZ FRANKLIN,

Petitioner, : Case No. 3:04-cv-187

- vs -

NORMAN ROBINSON, Warden,

Magistrate Judge Michael R. Merz

Respondent. :

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**DECISION AND ORDER DENYING MOTION FOR CERTIFICATE  
OF APPEALABILITY REGARDING PRO SE MOTION TO  
DISQUALIFY; CERTIFICATE REGARDING IN FORMA PAUPERIS  
STATUS; DEFICIENCY ORDER**

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This capital habeas corpus case is before the Court on Petitioner Antonio Franklin's Motion for a Certificate of Appealability on his *pro se* Motions to Disqualify and to Reconsider (ECF No. 233, 235).

On March 5, 2018, Petitioner Antonio Franklin filed a *pro se* Affidavit of Disqualification to have the Magistrate Judge removed as the presiding judicial officer in this case<sup>1</sup>. The Court promptly denied disqualification (ECF No. 234) and again denied it on Petitioner's *pro se* Motion for Reconsideration (ECF No. 236). Petitioner has now filed a *pro se* Notice of Appeal (ECF No. 238) and seeks a certificate of appealability to allow him to pursue that appeal.

As required by 18 U.S.C. § 3599, Petitioner has been represented throughout the course

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<sup>1</sup> Upon the parties' unanimous consent, District Judge Sandra Beckwith referred this case to the undersigned Magistrate Judge on June 4, 2004, shortly after it was filed (ECF No. 26).

of these proceedings by highly qualified capital counsel. The Magistrate Judge has refused to replace them despite repeated requests from Franklin. In his Motion for Certificate of Appealability, he candidly admits that his desire to remove the Magistrate Judge is so that a new presiding judicial officer will replace his “feckless counselors.”

Franklin offered no evidence of disqualifying bias and thus his motions were denied. He now offers no evidence that any jurist of reason would disagree with that conclusion. Because reasonable jurists would not find the question of disqualifying bias debatable in this case, Petitioner’s Motion for a certificate of appealability is DENIED and the Court certifies to the Sixth Circuit that Franklin’s appeal is objectively frivolous and therefore should not be permitted to proceed *in forma pauperis*. The Magistrate Judge pretermits any discussion of whether a judge’s decision to deny disqualification is immediately appealable, which jurisdictional issue is reserved to the Court of Appeals.

Because Franklin filed his Notice of Appeal without paying the filing fee and without permission to proceed on appeal *in forma pauperis*, he is liable for the appellate filing fee of \$505 which he must pay to the Clerk not later than May 24, 2018.

Although this Court has denied a certificate of appealability, Franklin may seek that relief from the Court of Appeals, which also has authority to permit him to proceed *in forma pauperis*.

April 24, 2018.

s/ *Michael R. Merz*  
United States Magistrate Judge